

IC 30-4-2

Chapter 2. Rules Governing the Creation of Trusts

IC 30-4-2-1 Version a

Written evidence of terms; definite terms; validity of inter vivos trust

Note: This version of section effective until 1-1-2006. See also following version of this section, effective 1-1-2006.

Sec. 1. (a) A trust in either real or personal property is enforceable only if there is written evidence of its terms bearing the signature of the settlor or his authorized agent.

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but its terms must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee's interest, the identity of the beneficiary, the nature of the beneficiary's interest and the purpose of the trust may be ascertained with reasonable certainty.

(c) It is not necessary to the validity of an inter vivos trust that the inter vivos trust be funded with or have a corpus that includes property other than the present or future, vested or contingent right of the trustee to receive proceeds or property as beneficiary of an estate under IC 29-1-6-1, life insurance benefits under section 5 of this chapter, retirement plan benefits, or the proceeds of an individual retirement account.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.132-1992, SEC.1.

IC 30-4-2-1 Version b

Written evidence of terms; definite terms; validity of inter vivos trust; existence of trust beneficiaries; creation of trust by exercise of power of appointment

Note: This version of section effective 1-1-2006. See also preceding version of this section, effective until 1-1-2006.

Sec. 1. (a) A trust in either real or personal property is enforceable only if there is written evidence of its terms bearing the signature of the settlor or the settlor's authorized agent.

(b) Except as required in the applicable probate law for the execution of wills, no formal language is required to create a trust, but its terms must be sufficiently definite so that the trust property, the identity of the trustee, the nature of the trustee's interest, the identity of the beneficiary, the nature of the beneficiary's interest and the purpose of the trust may be ascertained with reasonable certainty.

(c) It is not necessary to the validity of a trust that the trust be funded with or have a corpus that includes property other than the present or future, vested or contingent right of the trustee to receive proceeds or property, including:

- (1) as beneficiary of an estate under IC 29-1-6-1;
- (2) life insurance benefits under section 5 of this chapter;
- (3) retirement plan benefits; or
- (4) the proceeds of an individual retirement account.

- (d) A trust created under:
 - (1) section 18 of this chapter for the care of an animal; or
 - (2) section 19 of this chapter for a noncharitable purpose;has a beneficiary.
- (e) A trust has a beneficiary if the beneficiary can be presently ascertained or ascertained in the future, subject to any applicable rule against perpetuities.
- (f) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.
- (g) A trust may be created by exercise of a power of appointment in favor of a trustee.
(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.132-1992, SEC.1; P.L.238-2005, SEC.21.

IC 30-4-2-1.5

Trust not created by will; requirements

Effective 1-1-2006.

Sec. 1.5. (a) Except as provided in subsection (b), a trust that is not created by a will is validly created if the trust's creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property is located.

(b) A valid trust must be:

- (1) in writing; and
- (2) signed by:
 - (A) the settlor; or
 - (B) an agent of the settlor who is an attorney in fact.

As added by P.L.238-2005, SEC.22.

IC 30-4-2-2 Version a

Acceptance by trustee

Note: This version of section effective until 1-1-2006. See also following version of this section, effective 1-1-2006.

Sec. 2. (Acceptance by Trustee)

With respect to acceptance of a trust by a person named as trustee:

(a) The appearance of the named person's signature on the writing which is the evidence of the trust or on a separate written acceptance will be conclusive that he accepted the trust.

(b) Except as provided in subsection (d) of this section, if the named person exercises powers or performs duties under the trust, he will be presumed to have accepted the trust.

(c) The named person may reject the trust in writing and, if he does so, will incur no liability. If, after being informed that he has

been named as trustee, he neither expressly accepts the trust nor exercises powers or performs duties under the trust within a reasonable time he will be presumed to have rejected the trust.

(d) If there is an immediate risk of damage to the trust estate, the named person may act to preserve the trust estate and will not be presumed to have accepted the trust, provided he delivers a written rejection to the settlor at or within a reasonable time after he acts, or, if the settlor is dead, to the beneficiary or the court having jurisdiction over the administration of the trust estate.

(e) If the person named as the original trustee does not accept the trust, or if he is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust, or selected as alternate trustee according to a method prescribed in the terms of the trust, may accept the trust. If no person is named as trustee or if there is no alternate trustee designated or selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-2 Version b

Acceptance by trustee

Note: This version of section effective 1-1-2006. See also preceding version of this section, effective until 1-1-2006.

Sec. 2. (a) This section applies to the acceptance of a trust by a person named as trustee.

(b) The appearance of the named person's signature on the writing which is the evidence of the trust or on a separate written acceptance will be conclusive that the named person accepted the trust.

(c) Except as provided in subsection (e), if the named person exercises powers or performs duties under the trust, the named person will be presumed to have accepted the trust.

(d) The named person may reject the trust in writing and, if the named person does so, will incur no liability. If, after being informed that the named person has been named as trustee, the named person neither expressly accepts the trust nor exercises powers or performs duties under the trust within a reasonable time, the named person will be presumed to have rejected the trust.

(e) If there is an immediate risk of damage to the trust estate, the named person may act to preserve the trust estate and will not be presumed to have accepted the trust, provided the named person delivers a written rejection to the settlor at or within a reasonable time after the named person acts, or, if the settlor is dead, to the beneficiary or the court having jurisdiction over the administration of the trust estate.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.23.

IC 30-4-2-3 Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-4

Repealed

(Repealed by P.L.293-1983, SEC.2.)

IC 30-4-2-5

Life insurance trusts

Sec. 5. (Life Insurance Trusts)

Proceeds of life insurance policies heretofore made payable to a trustee or trustees named as beneficiary or hereafter to be named beneficiary under an inter vivos trust shall be paid directly to the trustee or trustees and held and disposed of by the trustee or trustees as provided in the trust agreement or declaration of trust in writing made and in existence on the date of death of the insured, whether or not such trust or declaration of trust is amendable or revocable or both, or whether it may have been amended, and notwithstanding the reservation of any or all rights of ownership under the insurance policy or annuity contract; subject, however, to a valid assignment of any part of the proceeds. It is not necessary to the validity of such trust agreement or declaration of trust that it be funded or have a corpus other than the right, which need not be irrevocable, of the trustee or trustees named therein to receive such proceeds as beneficiary. A policy of life insurance or annuity contract may designate as beneficiary a trustee or trustees named or to be named by will if the designation is made in accordance with the provisions of the policy or contract whether or not the will is in existence at the time of the designation.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-6

Nature of trustee's estate

Sec. 6. (Nature of the Trustee's Estate)

(a) The trustee takes the title to the trust property.

(b) The extent of the trustee's estate in the trust property is limited to that which is necessary to enable him to perform the trust.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-7

Nature of beneficiary's estate

Sec. 7. (Nature of the Beneficiary's Estate)

(a) The beneficiary takes an equitable interest in the trust property.

(b) The extent of the beneficiary's estate shall be determined from the terms of the trust. The Rule in Shelley's Case and the Doctrine of Worthier Title shall not be applied to determine the meaning or application of the terms.

(c) Except as provided in 30-4-2-14, if, under the terms of the trust, the trustee is required at some time to distribute real property from the trust estate to a beneficiary, that beneficiary's equitable interest is real property. In all other cases the beneficiary's interest is personal property.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-8

Merger of estates

Sec. 8. (a) If the settlor transfers both the title and the entire equitable interest in property to the same person as both the sole trustee and the sole beneficiary, no trust will be deemed to have been created and the transferee shall treat the property as the transferee's own.

(b) Except as provided in subsection (c), if the title to the trust property and the entire beneficial interest becomes united in one (1) person the trust terminates. If:

- (1) a beneficiary is serving as trustee; and
- (2) the trust creates an interest in a beneficiary who is not the trustee, whether the interest is contingent or vested;

the entire beneficial interest shall not be construed to be united in one (1) person.

(c) The title to the trust property and the entire beneficial interest shall not become united in a beneficiary whose interest is protected under a trust with protective provisions, and in that case the court shall appoint a new trustee to administer the trust for the beneficiary's benefit.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.200-1991, SEC.2.

IC 30-4-2-9

Necessity of powers or duties

Sec. 9. (Necessity of Powers or Duties)

Subject to 30-4-2-13, if the trustee has neither a power nor a duty related to the administration of the trust, the title to the trust property will be treated as having vested directly in the beneficiary on the date of delivery to the trustee.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-10 Version a

Capacity of settlor

Note: This version of section effective until 1-1-2006. See also following version of this section, effective 1-1-2006.

Sec. 10. (Capacity of Settlor)

(a) If a trust is created by a declaration by the owner of property that he holds it in trust, his capacity must be the same as if the trust were created by a transfer to a third person.

(b) If the trust is created by a transfer of property in trust, the transferor must have the same capacity as if he had made a non-trust transfer of the property.

(c) If the trust is created by a will, the settlor's capacity is determined by the applicable probate law.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-10 Version b

Capacity of settlor

Note: This version of section effective 1-1-2006. See also preceding version of this section, effective until 1-1-2006.

Sec. 10. (a) If a trust is created by a will, the settlor's capacity that is required to create the trust is determined by the applicable probate law.

(b) The capacity of a settlor that is required to create, amend, revoke, or add property to a revocable trust is the same as the capacity of a testator that is required to make a will.

(c) To create or add property to an irrevocable trust, the settlor or transferor must be of sound mind and have a reasonable understanding of the nature and effect of the act and the terms of the trust.

(d) To direct the actions of the trustee of a trust, the settlor or other person must:

- (1) have the capacity to hold and deal with property for the settlor's or person's own benefit;
- (2) be at least eighteen (18) years of age; and
- (3) be of sound mind.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by P.L.238-2005, SEC.24.

IC 30-4-2-11**Capacity of trustee**

Sec. 11. (Trustee's Capacity)

(a) If the trustee is a natural person, he must have the capacity to take, hold, and deal with property for his own benefit and must be at least eighteen (18) years of age, be of sound mind and of good moral character.

(b) If the trustee is a corporation, it must have the power to take, hold, and deal with property for its own benefit and have the power to act as a trustee.

(c) Subject to IC 1971, 30-4-2-8, the fact that the person named to be trustee is also a beneficiary will not disqualify him from acting as trustee if he is otherwise qualified.

(Formerly: Acts 1971, P.L.416, SEC.3; Acts 1973, P.L.293, SEC.6.)

IC 30-4-2-12**Illegality**

Sec. 12. (Illegality)

(a) The terms of the trust may not require the trustee to commit a criminal or tortious act or an act which is contrary to public policy.

(b) A trust with terms which violate subsection (a) of this section is invalid unless the prohibited term is separable. If the prohibited term is separable, only it is invalid and the remainder of the trust is valid.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-13**Application of statute of uses**

Sec. 13. (Application of Statute of Uses)

If the trust property includes real property, and, under the terms of the trust,

(a) The beneficiary has the power to manage the trust property, including the power to direct the trustee to sell the property; and

(b) The trustee may sell the trust property only on direction by the beneficiary or other person or may sell it after a period of time stipulated in the terms of the trust in the absence of a direction: then 30-4-2-9 shall not apply to defeat the trustee's title.

(Formerly: Acts 1971, P.L.416, SEC.3.) As amended by Acts 1979, P.L.268, SEC.8.

IC 30-4-2-14

Assignment of beneficiary's interest

Sec. 14. (Assignment of Beneficiary's Interest)

(a) If the terms of the trust give the trustee the power to sell the trust property upon direction by the beneficiary or other person or to sell it after a stipulated period of time in the absence of a direction as provided in 30-4-2-13, the beneficiary may treat his interest as personal property and may assign it to any person notwithstanding the provisions of 30-4-2-7(c).

(b) The trustee will be bound by an assignment made under subsection (a) of this section only after he receives written notice of it.

(Formerly: Acts 1971, P.L.416, SEC.3.)

IC 30-4-2-15

Divorce or annulment of marriage; effect on revocable trust

Sec. 15. (a) This section does not apply to a trust:

(1) that is irrevocable on the date of a divorce or an annulment; or

(2) created by:

(A) the settlor and the settlor's spouse or former spouse under a written agreement with each other that requires the creation of the trust; or

(B) a court order.

(b) If, after creating a revocable trust, the settlor is divorced or the marriage of the settlor to the settlor's spouse is annulled, the settlor's former spouse shall for the purposes of the trust be treated as if the spouse had died before the settlor died.

As added by P.L.200-1991, SEC.3.

IC 30-4-2-16

Election by surviving spouse to take share against settlor's will; distribution of remainder

Sec. 16. (a) This section applies to:

(1) property in a trust that is subject to a spouse's right of election under IC 29-1-3; and

(2) a trust that receives property from the settlor's estate; if the settlor's spouse files an effective election to take a share of the

settlor's estate against the settlor's will under IC 29-1-3.

(b) The trustee shall dispose of the assets received from the settlor's estate and the portion of the trust remaining after the spouse's election as if the settlor's spouse had died before the settlor died.

As added by P.L.200-1991, SEC.4.

IC 30-4-2-17

Valid purposes of charitable trust; selection of purpose or beneficiary if not specified by trust

Sec. 17. (a) A charitable trust may be created for the following purposes:

- (1) The relief of poverty.
- (2) The advancement of education or religion.
- (3) The promotion of health.
- (4) Governmental and municipal purposes.
- (5) A purpose that is beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select at least one (1) charitable purpose or beneficiary. The selection must be consistent with the settlor's intention to the extent the intention can be ascertained.

(c) The settlor of a charitable trust, among other persons, may maintain a proceeding to enforce the charitable trust.

As added by P.L.238-2005, SEC.25.

IC 30-4-2-18

Trust for care of animal

Sec. 18. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime.

(b) A trust authorized by this section terminates as follows:

- (1) If the trust is created to provide for the care of one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the animal.
- (2) If the trust is created to provide for the care of more than one (1) animal alive during the settlor's lifetime, the trust terminates on the death of the last surviving animal.

(c) A trust authorized by this section may be enforced by the following:

- (1) A person appointed in the terms of the trust.
- (2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) A person having an interest in the welfare of an animal for whose care a trust is established may request the court to:

- (1) appoint a person to enforce the trust; or
- (2) remove a person appointed to enforce the trust.

(e) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(f) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.26.

IC 30-4-2-19

Trust for noncharitable purpose

Sec. 19. (a) Except as provided in section 18 of this chapter, a trust may be created for a:

(1) noncharitable purpose without a beneficiary; or

(2) noncharitable and valid purpose to be selected by the trustee.

(b) A trust authorized by this section may be enforced for not more than twenty-one (21) years.

(c) A trust authorized by this section may be enforced by the following:

(1) A person appointed in the terms of the trust.

(2) A person appointed by the court, if the terms of the trust do not appoint a person.

(d) Property of a trust authorized by this section may be applied only to the trust's intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the trust's intended use.

(e) Except as provided in the terms of the trust, property not required for the trust's intended use must be distributed to the following:

(1) The settlor, if the settlor is living.

(2) The settlor's successors in interest, if the settlor is deceased.

As added by P.L.238-2005, SEC.27.